

MF 05-2

Tax Type: Motor Fuel Use Tax

Issue: Dyed-Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 05-ST-0000
v.)	Acct # 00-0000000
)	
ABC TRUCKING, INC.)	Claim for Credit or Refund
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe as a representative of ABC Trucking, Inc.

Synopsis:

The Department of Revenue (“Department”) issued a letter to ABC Trucking, Inc. (“taxpayer”) denying its claim for a refund of taxes paid on un-dyed diesel fuel purchased in Illinois. The taxpayer’s claim requested a refund of \$68,171.99 for taxes paid on un-dyed diesel fuel purchased during the period of April 2003 to December 2003. The taxpayer timely protested the Department’s denial of the claim. In lieu of an evidentiary hearing, the parties filed a joint stipulation of facts along with supporting exhibits. The taxpayer also submitted written arguments in support of its position; the Department did not submit any arguments. The sole issue presented by the parties is whether the

taxpayer's claim for refund is barred by the statute of limitations. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is licensed in Illinois as a supplier of motor fuel with license number XXXXX. (Stip. #1)

2. On March 3, 2005, the Department received a Form RMFT-11-A, Illinois Motor Fuel Tax Refund Claim, which was filed by the taxpayer. The claim requested a refund of \$68,171.99 for taxes paid on un-dyed diesel fuel purchased during the period of April 2003 to December 2003. (Stip. #2; Joint Ex. #1)

3. The claim shows that the taxpayer purchased a total of 1,524,173 gallons of un-dyed diesel fuel, and 317,079 of those gallons were used for off-highway purposes. The taxpayer requested a refund of the taxes paid on the off-highway gallons. (Joint Ex. #1)

4. Of the total of 1,524,173 gallons that were purchased, 1,165,766 gallons were purchased in bulk from suppliers, and 358,407 gallons were purchased at the pump and recorded through the Comdata Network reporting service. (Joint Ex. #3)

5. The taxpayer is required to monthly file Form RMFT-5, Motor Fuel Distributor/Supplier Tax Return. The taxpayer reported the gallons that were purchased in bulk from the suppliers on these monthly returns filed with the Department during the time period in question. The gallons that were purchased at the pump were not reported on these returns. (Joint Ex. #3, 4)

6. The RMFT-5 requires off-highway fuel to be reported on line 15. (Joint Ex. #4)

7. On March 10, 2005, the Department issued a letter to the taxpayer denying the request for a refund. (Stip. #3; Joint Ex. #2)

CONCLUSIONS OF LAW:

Section 13 of the Motor Fuel Tax Act provides in relevant part as follows:

Any distributor or supplier who has paid the tax imposed by Section 2 of this Act upon motor fuel lost or used by such distributor or supplier for any purpose other than operating a motor vehicle upon the public highways or waters may file a claim for credit or refund to recover the amount so paid. **Such claims shall be filed on forms prescribed by the Department.** Such claims shall be made to the Department, duly verified by the claimant (or by the claimant's legal representative if the claimant has died or become a person under legal disability), upon forms prescribed by the Department. The claim shall state such facts relating to the purchase, importation, manufacture or production of the motor fuel by the claimant as the Department may deem necessary and the time when the loss or nontaxable use occurred, and the circumstances of its loss or the specific purpose for which it was used (as the case may be), together with such other information as the Department may reasonably require. **Claims must be filed not later than one year after the date on which the tax was paid by the claimant.** (emphasis added) 35 ILCS 505/13.

The Department denied the claim on the basis that it is barred by the statute of limitations.

The taxpayer first argues that it was not aware that it had to list off-highway miles on both the RMFT-5 and RMFT-11-A. The taxpayer claims that it correctly reported the off-highway miles on line 15 of the RMFT-5, and it should be able to receive the refund of taxes paid on those miles because the Department had notice that those were off-highway miles. The taxpayer contends that it should not be penalized for reporting correctly on the RMFT-5 but not on the RMFT-11-A. The taxpayer also contends that at a minimum, it should be allowed a refund of the tax paid on the fuel that was purchased at the pump and recorded through the Comdata Network reporting service. The taxpayer states that this fuel was not reported on the RMFT-5, which is the supplier tax return, and

therefore the statute of limitations that applies to suppliers should not apply in determining whether the taxpayer timely requested a refund of the tax paid on this fuel.

Section 13 of the Motor Fuel Tax Act requires claims to be filed on forms prescribed by the Department. It should first be noted that all of the RMFT-5 forms filed by the taxpayer for the time period in question were not provided to verify that the off-highway miles reported on the RMFT-5 equals the off-highway miles reported on the RMFT-11-A.

Nevertheless, even if the taxpayer correctly reported the off-highway miles on the RMFT-5, the RMFT-5 is not a claim form, and nothing on the RMFT-5 notifies the Department that the taxpayer wants a refund of tax paid on the off-highway fuel. The reason for requiring claims to be filed on forms prescribed by the Department is that the Department must have sufficient notice that the taxpayer is entitled to a refund and that the Department must refund the money. The RMFT-5 form does not notify the Department that the taxpayer is entitled to a refund, and it cannot be considered a claim for one. It is necessary for the taxpayer to file the proper form so that the Department has notice to refund the taxes.

The taxpayer did not file the proper claim form until March 3, 2005. The claim requests a refund of taxes paid between April 2003 and December 2003. Because the taxpayer stipulated that it identifies itself as a supplier and it files monthly supplier returns, section 13 requires a supplier's claim to be filed no later than one year after the date on which the tax was paid. The taxpayer's claim for a refund of taxes paid in April 2003 should have been filed by April 2004. The taxpayer's claim was not timely filed.

The taxpayer's contention that it should receive a refund of the tax paid on the fuel that was not reported on the supplier's tax return is also not a basis for allowing the claim. Although section 13 provides a longer time period for filing claims of non-suppliers, the time period is not based on the form on which the fuel is initially reported. The section distinguishes between claims filed by distributors or suppliers and all other claims. The taxpayer is a supplier, and therefore the time period for filing its claims is one year. Whether the fuel is reported on the supplier's return is not a distinction that is relevant under section 13. Because the taxpayer is a supplier, its claim for a refund of tax paid on all of its fuel should have been filed within one year of when the tax was paid.

The purpose of the limitations period is to ensure that parties exercise reasonable diligence in asserting their claims. Even though a taxpayer might otherwise be entitled to a refund, the statute of limitations prohibits the Department from issuing a refund that was not properly requested within the appropriate time period. (See Dow Chemical Co. v. Department of Revenue, 224 Ill.App.3d 263 (1st Dist. 1991). Although this result may seem severe, the law does not allow for a different conclusion.

Recommendation:

Because the taxpayer did not file a claim for refund within the limitations period, the claim must be denied.

Linda Olivero
Administrative Law Judge

Enter: August 12, 2005